

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1054 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

VELAHI SANTRAJI

Versus

ISHVERBHAI AMARTLAL MODY

Appearance:

MR KALPESH ZAVERI for the Petitioner

MR DK TRIVEDI for respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision : 24/03/2000

CAV JUDGEMENT

#. The petitioners herein are the original defendants in the Regular Civil Suit No.1/1977 filed by the respondent No.1-original plaintiff landlord for possession of suit land i.e. Survey No. 15 admeasuring 133 sq. yards. The land was originally let out to the respondent Nos. 2

and 3 the original defendant Nos. 1 and 2 on the monthly rent of Rs.2,000/=. The petitioners-defendants are claiming themselves to be in occupation of the suit land as agricultural labourers and ganotiya for more than thirty years. The suit was came to be decreed with costs against the respondent Nos. 2 and 3 for possession and mesne profit. The decree has also been passed against the petitioners for possession of the land. The judgment was delivered on 30/6/88. The petitioners along with other defendants i.e. respondent Nos. 2 and 3 herein against the decree and judgment of the trial court preferred Regular Civil Suit No.34/88 on 25/8/88. Along with the appeal they preferred an application for stay of the execution of the decreed. It is stated that the appellate court has been pleased to grant the stay of the execution decree. That appeal was came to be dismissed for default on 4/8/89 for want of prosecution. The petitioners preferred Civil Misc. Application No.94/89 on 23/8/99 and therein the court granted stay upto 5/9/89. On 5/9/89 the court passed an order to effect that the arrears of the rent is to extent of Rs.8,000/= and more and the stay application was rejected. Against that order the petitioner wanted to come to this court. They had applied to the court that the stay may be granted but that application was came to be rejected.

#. Being aggrieved of the two orders, aforesaid as well as the order dated 4/8/89, this revision application is preferred.

#. This court has admitted the petition and the interim relief granted in terms of para 10(B). Para 10(B) reads as under :

Pending the final hearing and disposal of this petition, the Honourable Court be pleased to stay the execution and operation of the judgment and decree passed in Regular Civil No.1 of 1977 dated 30th June 1988 and be pleased to stay the execution and operation of the order dated 4th August, 1989 passed in Regular Civil Appeal No.34 of 1988 and be pleased to stay the execution and operation of the orders at Exh.12 and 13 of Civil Misc. Application No.94 of 1989 dated 5th September, 1989."

#. This interim relief is continued for all these years. On the record of this civil revision application, the petitioners have not produced the order of the Court

below dismissing their appeal for nonprosecution. The order dated 4/8/89 is also not there on the record of this civil revision application. However, the order dated 5/9/89 is there on the record of this civil revision application. Memo of the appeal is there on the record and therefrom I find that the respondent Nos. 2 and 3 are respondents there in. In view of the facts aforesaid the challenge made to the order dated 4/8/89 is not tenable. Otherwise also against dismissal of the appeal for nonprosecution this revision application is not maintainable. Either they have to go for restoration of appeal or second appeal. Though very specifically it is not stated but it appears that the petitioners have filed an application for restoration of the appeal and the Civil Misc. Application No.94/89 for stay.

#. The learned counsel for the petitioners is unable to give out any explanation for all these. Be that as it may. For all these years interim relief granted by this court is continuing in favour of the petitioner. Under order dated 5/9/89 application for stay is rejected only on the ground that the arrears have not been paid. That means mesne profit, which has been decreed as well as the further mesne profits. I do not find any merits in the contention of the learned counsel for the petitioners that against the petitioners decree of mesne profit has not been passed and as such there is no liability upon them to pay the same. They are occupying the land. They are challenging the decree and the court is perfectly legal and justified to ask them to make the payment of the said amount. However in case all the arrears of the mesne profit and regularly the mesne profits are deposited by the petitioners in the court below the stay shall continue till the decision of the Misc. Civil application for restoration of the appeal. The arrears of the mesne profit up to the day be deposited by the petitioners within a period of one month from today and thereafter to deposit regularly by 5th day of the month in the court. The learned First Appellate Court is directed to decide the C.M.A. within a period of one month from the date of the receipt of the writ of this court. In case application is allowed and appeal is restored same shall be decided within two months next. In that case the stay shall continue till decision of the appeal.

Subject to the aforesaid directions, the Rule and Civil Revision Application stand disposed of. In case the directions given re deposit of the mesne profit are not complied with by the petitioner within the stipulated period then the respondent-decree holder is free to

execute the decree. No order as to costs.

(S.K.Keshote, J.)

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